be given a law unless the intention of the legislature to give it such effect is clearly manifest. *City of Colorado Springs* v. *Neville,* — Colo. —, 93 Pac. 1096. While the principal case is correctly decided under the Virginia law the rule is so unusual as to make the case an interesting one, as creating a condition impossible at common law.

SALES—CONDITIONAL SALE—DESTRUCTION OF PROPERTY. — Defendant purchased of plaintiff a cash register for $580, $50 to be paid on delivery and the remainder in ten monthly installments. Upon default in payment of any installment the full amount should at once become due, and the sum paid should be retained by the plaintiff as rental. Title to the property was to remain in the plaintiff until payment in full. After delivery and payment of the $50, but before the first installment was due, the register was destroyed by fire, without the fault of either party. *Held,* defendant was liable for the purchase price. *National Cash Register Co.* v. *South Bay Club House Assn.* (1909), 118 N. Y. Supp. 1044.

The court states as a general rule that the party retaining title must suffer the loss, but construes the contract as varying this rule. This construction turns upon the question of consideration: If it is the sale and transfer on receipt of full price, the defense of failure of consideration is good, as performance is impossible; if it is merely the transfer of title, then the plaintiff has fully performed and the consideration has not failed. The former construction is adopted where the buyer is regarded as a bailee, *Herring* v. *Hoppock,* 15 N. Y. 409, or where some further act of the vendor is necessary to complete the transaction, *Swallow* v. *Emery,* 111 Mass. 355; *Arthur & Co.* v. *Blackman,* 63 Fed. 536. That the consideration has not failed is the view adopted by the court, and is the one in conformity with the provisions of the Sales Act, §22(a), and with the weight of authority. *Chicago Ry. etc. Co.* v. *Merchants' Bank,* 136 U. S. 268, 283, 34 L. ed. 349; *White* v. *Solomon,* 164 Mass. 516, 42 N. E. 104, 30 L. R. A. 537; *American Soda Fountain Co.* v. *Vaughn,* 69 N. J. L. 582, 55 Atl. 54; *Tufts* v. *Griffin,* 107 N. C. 47, 12 S. E. 68, 10 L. R. A. 526, 22 Am. St. Rep. 863. The decisions on this point are in conflict (WILLISTON, SALES, §§303, 304) but the better opinion is with the court. Similar cases holding contra, are: *Blue* v. *American Soda Fountain Co.,* 146 Ala. 682, 40 South. 218, 150 Ala. 165, 43 South, 709; *Mountain City Mill Co.* v. *Butler,* 109 Ga. 469, 34 S. E. 565; *Cobb* v. *Tufts* (Tex. Civ. App.), 2 Willson 141, *154.

SALES—CONSTRUCTION OF CONTRACT—ANTICIPATORY BREACH.—On April 17, 1905, the defendant wrote plaintiff that he would like to sell 200 or 300 B/c good cotton, stating the cotton graded Atlanta 3's. On April 25, 1905, defendant wrote plaintiff a postal card offering 200 B/c good cotton, all in fine condition; and on the following day sent a telegram requesting a bid on 200 bales of good cotton. The plaintiff made a bid, which was accepted, but when delivery was demanded, defendant asked to be relieved of the contract. This the plaintiff refused to do. *Held,* defendant was liable on a contract graded

Atlanta 3's, and that the breach occurred on refusal to perform. *B. B. Ford & Co.* v. *Lawson* (1909), — Ga. —, 65 S. E. 444.

The court, in construing the meaning of "good cotton," took into consideration the defendant's original offer to sell good cotton graded Atlanta 3's; although no other mention of the quality of the cotton was made in the telegram of acceptance than "good cotton,"—which expression includes Atlanta 1's, 2's, 3's, and 4's. According to §3674 Civil Code 1895 (Ga.) if one party places a certain meaning upon a contract, and that is known to the other party, such meaning governs. A similar construction was placed on contracts in *Slater, Myers & Co.* v. *Demorest Spoke & Handle Co.*, 94 Ga. 687, 21 S. E. 715; *Armistead* v. *McGuire*, 46 Ga. 232. The refusal of the lower court to charge that a breach occurred upon the defendant's refusal to perform, prior to the date set for delivery, was held error; the upper court ruling in accordance with the overwhelming weight of authority (MECHEM, SALES, §1089) following *Hochster* v. *De La Tour*, 2 El. & Bl. 678; *Roehm* v. *Horst*, 178 U. S. 1, 20 Sup. Ct. 780, 44 L. Ed. 953. The courts of but two states hold contra: *Stanford* v. *Magill*, 6 N. Dak. 536, 72 N. W. 938, 38 L. R. A. 760; *King* v. *Waterman*, 55 Neb. 324, 75 N. W. 830.

SUNDAY—SUNDAY BASEBALL NOT A MISDEMEANOR.—Certain clergymen in Detroit prayed for a writ of mandamus to compel the police commissioner to stop Sunday baseball playing, and the supreme court, on certiorari, after stating that the police commissioner was not one of the officers named by Comp. laws 1897, §11,334, to command a dispersal, *held* that playing baseball on Sunday does not amount to a misdemeanor and cannot be prosecuted by indictment, and that a mere assemblage of persons to play and witness such a game on Sunday is not of itself and necessarily a breach of the peace sufficient, without overt acts of violence or disorder, to authorize a summary arrest. *Yerkes, Pros. Atty.* v. *Smith, Police Com'r* (1909), — Mich. —, 122 N. W. 223.

At common law all acts not unlawful per se may be lawfully performed on Sunday. *Eden Musee American Co.* v. *Bingham*, 108 N. Y. Supp. 200. But statutes and ordinances restricting public amusements on that day have been generally adopted. Mr. Justice CAMPBELL, in *Robison* v. *Miner*, 68 Mich. 557, 37 N. W. 25, expressed the reasoning which the principal case seems to follow thus: "No arrest without a warrant can be made except in case of felony or breach of the peace committed in the presence of the arresting officer." "This exception in cases of breaches of the peace has only been allowed by reason of the immediate danger to the safety of the community against crimes of violence" such as assault and riotous conduct. "But there can be no breach of the peace within the meaning of this law that does not embrace some sort of violence as well as dangerous conduct." It is manifest that in Michigan, Sunday baseball does not come within this reasoning. The supreme court of New York, in *Paulding* v. *Lane*, 55 Misc. 37, 104 N. Y. Supp. 1051, held that public baseball playing on Sunday, under §265 of the penal code is a misdemeanor whether an admission fee is charged or not, and the proper officer may and should arrest any and all persons who may be engaged in his presence in playing such game. But the playing of baseball on Sunday by